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3 Eastern District of Washington
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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 01, 2020

SEAN F. MCAVOY, CLERK

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

2:12-CR-00016-WFN-5

11 vs.

12 Plea Agreement

13 BRICE CHRISTIAN DAVIS,

14 Defendant.

15 Plaintiff, United States of America, by and through William D. Hyslop, United
16 States Attorney for the Eastern District of Washington, and Timothy J. Ohms and
17 Patrick J. Cashman, Assistant United States Attorneys for the Eastern District of
18 Washington, and Defendant Brice Christian Davis and the Defendant's counsel, David
19 Miller, agree to the following Plea Agreement:

20 1) Guilty Plea and Maximum Statutory Penalties:

21 The Defendant agrees to waive indictment by a grand jury and to plead guilty to
22 the Information Superseding Indictment charging the Defendant with Manufacture of
23 50 or More Marijuana Plants, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).

24 The Defendant understands that this is a Class C felony, which carries a
25 maximum penalty of: (1) not more than a 20-year term of imprisonment; (2) a fine
26 not to exceed \$1,000,000; (3) at least 3-years of supervised release and up to a life
27

1 term of supervised release; (4) a \$100 special penalty assessment; and (5) denial of
2 certain Federal Benefits.

3 The Defendant understands that a violation of a condition of supervised release
4 carries an additional penalty of re-imprisonment for all or part of the term of
5 supervised release without credit for time previously served on post-release
6 supervision.

7 2) Denial of Federal Benefits:

8 The Defendant understands that by entering this plea of guilty the Defendant is
9 no longer eligible for assistance under any state program funded under part A of title
10 IV of the Social Security Act (concerning Temporary Assistance for Needy Families)
11 or benefits under the food stamp program or any state program carried out under the
12 Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny the Defendant's
13 eligibility to any grant, contract, loan, professional license, or commercial license
14 provided by an agency of the United States or by appropriated funds of the United
15 States. 21 U.S.C. § 862.

16 3) The Court is Not a Party to the Agreement:

17 The Court is not a party to this Plea Agreement and may accept or reject this
18 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
19 Court. The Defendant understands that the Court is under no obligation to accept any
20 recommendations made by the United States and/or by the Defendant; that the Court
21 will obtain an independent report and sentencing recommendation from the U.S.
22 Probation Office; and that the Court may, in its discretion, impose any sentence it
23 deems appropriate up to the statutory maximums stated in this Plea Agreement.

24 The Defendant acknowledges that no promises of any type have been made to
25 the Defendant with respect to the sentence the Court will impose in this matter. The
26 Defendant understands that the Court is required to consider the applicable sentencing
27 guideline range, but may depart upward or downward under the appropriate
28 circumstances.

1 The Defendant also understands that should the sentencing judge decide not to
2 accept any of the parties' recommendations, that decision is not a basis for
3 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

4) Waiver of Constitutional Rights:

5 The Defendant understands that by entering this plea of guilty the Defendant is
6 knowingly and voluntarily waiving certain constitutional rights, including:

- 7 a) The right to a jury trial;
8 b) The right to see, hear and question the witnesses;
9 c) The right to remain silent at trial;
10 d) The right to testify at trial; and
11 e) The right to compel witnesses to testify.

12 While the Defendant is waiving certain constitutional rights, the Defendant
13 understands the Defendant retains the right to be assisted through the sentencing and
14 any direct appeal of the conviction and sentence by an attorney, who will be appointed
15 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also
16 acknowledges that any pretrial motions currently pending before the Court are waived.

17) Elements of the Offense:

18 The United States and the Defendant agree that in order to convict the
19 Defendant of Manufacture of Marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)
20 (1)(C), the United States would have to prove beyond a reasonable doubt the
21 following elements:

22 *First*, on or about November 2, 2011, in the Eastern District of Washington, the
23 Defendant, Brice Christian Davis, knowingly manufactured marijuana;

24 *Second*, the Defendant knew it was marijuana or some other prohibited drug;
25 and

26 *Third*, the quantity of marijuana was 50 or more plants.

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1 6) Factual Basis and Statement of Facts:

2 The United States and the Defendant stipulate and agree that the following facts
3 are accurate; that the United States could prove these facts beyond a reasonable doubt
4 at trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.
5 This statement of facts does not preclude either party from presenting and arguing, for
6 sentencing purposes, additional facts which are relevant to the guideline computation
7 or sentencing, unless otherwise prohibited in this agreement.

8 On October 28, 2011, Spokane County Sheriff's Office detectives responded to
9 the area of 12010 N. Judkins Road to investigate a reported odor of growing or freshly
10 harvested marijuana. During the course of this investigation, the detectives determined
11 that the odor of marijuana was emanating from the address of 11911 N. Judkins Road.
12 The Detectives approached the residence and observed plastic laid on the floor of the
13 front room with marijuana stems and leaves on top. The detectives applied for and
14 were granted authorization to search the premise at 11911 N. Judkins Road. The
15 search was executed on November 2, 2011, with participation from federal agents.
16 Several people were found at the residence, including the Defendant, Jared Kynaston,
17 Jayde Evans, and Peter Mobley.

18 The search uncovered 318 suspected growing marijuana plants located in the
19 garage area, 146 suspected growing marijuana plants located in what appeared to be a
20 clone room, 28 suspected growing marijuana plants in the master bedroom, 67
21 suspected growing marijuana plants in the green house directly behind the residence,
22 and three suspected marijuana plants in the living room area, for a total of 562
23 growing marijuana plants. A quantity of harvested marijuana was also found at the
24 residence. Detectives located a .40 Glock handgun, model 22C, bearing serial number
25 NWA719, on top of a grow room that was constructed within the garage.

26 The Defendant agreed to answer questions and told detectives that he had been
27 hired to tend the marijuana plants. The Defendant also said that he brought the Glock

1 handgun to the Judkins Road residence at Kynaston's request and provided it to
2 Kynaston.

3 Samples of the suspected marijuana were analyzed by the DEA laboratory and
4 determined to be marijuana.

5 7) The United States Agrees:

6 a) Dismissals:

7 At the time of sentencing, the United States agrees to move to dismiss the Third
8 Superseding Indictment, as applicable to the Defendant, filed on December 2, 2014
9 (ECF 575).

10 b) Not to File Additional Charges:

11 The United States Attorney's Office for the Eastern District of Washington
12 agrees not to bring any additional charges against the Defendant based upon
13 information in its possession at the time of this Plea Agreement and arising out of
14 Defendant's conduct involving illegal activity charged in this Information Superseding
15 Indictment, unless the Defendant breaches this Plea Agreement any time before
16 sentencing.

17 c) Not to File Information for Penalty Enhancement:

18 The United States agrees not to file an enhanced penalty information to
19 establish the Defendant's prior drug conviction, pursuant to 21 U.S.C. § 851.

20 8) United States Sentencing Guideline Calculations:

21 The Defendant understands and acknowledges that the United States Sentencing
22 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
23 determine the Defendant's applicable sentencing guideline range at the time of
24 sentencing.

25 a) Base Offense Level:

26 The Defendant understands that the United States will recommend that the
27 Court establish the base offense level for the Manufacture of 50 or More Marijuana

1 Plants, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), based on a total drug quantity
2 of 1,239 marijuana plants.

3 b) Specific Offense Characteristic – Possession of a Dangerous Weapon

4 The United States submits the Defendant's base offense level should be
5 increased by two-level because the Defendant possessed a dangerous weapon-firearm.
6 See USSG § 2D1.1(b)(1). The Defendant reserves the opportunity to object to the
7 application of this specific offense enhancement.

8 c) Other Specific Offense Characteristics May Apply:

9 The parties make no other agreement as to the application of other specific
10 offense enhancement or guideline adjustments. The parties are free to argue for or
11 object to the application of any other specific offense enhancement or guideline
12 adjustments, including any adjustments included by the United States Probation
13 Office.

14 d) Acceptance of Responsibility:

15 If the Defendant pleads guilty and demonstrates a recognition and an
16 affirmative acceptance of personal responsibility for the criminal conduct; provides
17 complete and accurate information during the sentencing process; does not commit
18 any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no
19 later than September 8, 2020, the United States will move for a three (3) level
20 downward adjustment in the offense level for the Defendant's timely acceptance of
21 responsibility, pursuant to USSG § 3E1.1(a) and (b).

22 The Defendant and the United States agree that the United States may at its
23 option and upon written notice to the Defendant, not recommend a three (3) level
24 downward reduction for acceptance of responsibility if, prior to the imposition of
25 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or
26 if the Defendant tests positive for any controlled substance.

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1 f) Criminal History:

2 The United States and the Defendant have made no agreement and make no
3 representations as to the criminal history category, which shall be determined after the
4 Presentence Investigative Report is completed.

5 9) Length of Imprisonment:

6 The United States agrees to recommend a sentence that does not exceed
7 fourteen (14) months imprisonment. The Defendant is free to recommend any
8 sentence that he believes is supported by the facts and law applicable to the case.

9 10) Criminal Fine:

10 The parties agree not to seek a fine.

11 11) Supervised Release:

12 The United States and the Defendant agree to recommend a three (3) year term
13 of supervised release. The parties acknowledge the Defendant intends to request early
14 termination after six months of supervised release. The United States agrees to take
15 no position on the Defendant's request, conditioned on complete compliance with the
16 terms and conditions of supervised release.

17 12) Mandatory Special Penalty Assessment:

18 The Defendant agrees to pay the \$100 mandatory special penalty assessment to
19 the Clerk of Court for the Eastern District of Washington, at or before sentencing,
20 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United
21 States before sentencing as proof of this payment.

22 13) Payments While Incarcerated:

23 If the Defendant lacks the financial resources to pay the monetary obligations
24 imposed by the Court, the Defendant agrees to earn the money to pay toward these
25 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
26 Program.

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1 14) Judicial Forfeiture:

2 The Defendant agrees to voluntarily forfeit and relinquish all right, title and
3 interest he has in the following listed asset(s) to the United States: a Glock, model
4 22C, .40 caliber pistol, serial number NWA719; and, 15 rounds of .40 caliber
5 ammunition, head stamped "WINCHESTER 40 S&W."

6 The Defendant acknowledges that the asset(s) covered by this agreement are
7 subject to forfeiture as property involved in the commission of the offense,
8 Manufacture of Marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and are
9 therefore forfeitable to the United States pursuant to 21 U.S.C. § 853.

10 The Defendant agrees to take all steps as requested by the United States to pass
11 clear title to the assets to the United States and to testify truthfully in any forfeiture
12 proceeding. Defendant agrees to hold all law enforcement agents and the United
13 States, its agents, and its employees harmless from any claims whatsoever arising in
14 connection with the seizure, abandonment, or forfeiture of any asset covered by this
15 agreement.

16 The Defendant further agrees to waive all constitutional and statutory
17 challenges in any manner (including direct appeal, habeas corpus, or any other means)
18 to any forfeiture carried out in accordance with this Plea Agreement on any grounds,
19 including that the forfeiture constitutes an excessive fine or punishment. Defendant
20 knowingly and voluntarily waives his right to a jury trial on the forfeiture of the
21 asset(s). Defendant waives oral pronouncement of forfeiture at the time of sentencing,
22 and any defects that may pertain to the forfeiture.

23 The Defendant waives further notice of any federal, state or local proceedings
24 involving the forfeiture of the seized assets the Defendant is agreeing to forfeit in this
25 Plea Agreement.

26 15) Additional Violations of Law Can Void Plea Agreement:

27 The Defendant and the United States agree that the United States may at its
28 option and upon written notice to the Defendant, withdraw from this Plea Agreement

1 or modify its recommendation for sentence if, prior to the imposition of sentence, the
2 Defendant is charged or convicted of any criminal offense whatsoever or if the
3 Defendant tests positive for any controlled substance.

4 16) Appeal Rights:

5 Defendant understands that he has a limited right to appeal or challenge the
6 conviction and sentence imposed by the Court. Defendant hereby expressly waives
7 his right to appeal his conviction and the sentence the Court imposes, including any
8 restitution order. Defendant further expressly waives his right to file any post-
9 conviction motion attacking his conviction and sentence, including a motion pursuant
10 to 28 U.S.C. § 2255, except one based upon ineffective assistance of counsel based on
11 information not now known by Defendant and which, in the exercise of due diligence,
12 could not be known by Defendant by the time the Court imposes the sentence.

13 17) Integration Clause:

14 The United States and the Defendant acknowledge that this document
15 constitutes the entire Plea Agreement between the United States and the Defendant,
16 and no other promises, agreements, or conditions exist between the United States and
17 the Defendant concerning the resolution of the case. This Plea Agreement is binding
18 only upon the United States Attorney's Office for the Eastern District of Washington,
19 and cannot bind other federal, state or local authorities. The United States and the
20 Defendant agree that this agreement cannot be modified except in a writing that is
21 signed by the United States and the Defendant.

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2 Approvals and Signatures
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4 Agreed and submitted on behalf of the United States Attorney's Office for
5 the Eastern District of Washington.
6

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8 William D. Hyslop
9 United States Attorney
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11 For: Patrick J. Cashman
12 Timothy J. Ohns
13 Assistant U.S. Attorney
14

15 8/28/2020
16 Date
17

18 Patrick J. Cashman
19 Patrick J. Cashman
20 Assistant U.S. Attorney
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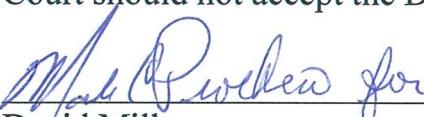
22 8/28/2020
23 Date
24

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.


Brice Christian Davis
Defendant

8-3-20
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept the Defendant's plea of guilty.


David Miller
Attorney for Defendant

8-3-2020
Date